

TXO PRODUCTION CORP.

IBLA 82-1085

Decided June 7, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting high bid for parcel No. 30 in competitive oil and gas lease sale. U-51050.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

TXO Production Corporation (TXO) has appealed from the May 21, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting its high bid of \$126.04 per acre for parcel No. 30 in a competitive oil and gas sale held on April 27, 1982. Parcel No. 30 contains 618.96 acres and is described as T. 16 S., R. 25 E., Salt Lake meridian, sec. 19: All, Grand County, Utah. The decision appealed from advised appellant that its high bid was being rejected because the Minerals Management Service (MMS) had determined that it was "significantly below the determined minimum acceptable bid value."

An MMS document entitled "Justification for Rejection of Bids" which was attached to a May 7, 1982, memorandum from MMS to the State Director, BLM, states in pertinent part as follows:

No DCF [discounted cash flow] analysis was performed for Parcels 29 and 30 due to the lack of reserve estimate data. However, during 1981 and 1982, six oil and gas lease sales occurred on State and Federal lands within a 6 mile radius of Parcels 29 and 30. The three sales nearest to Parcel 29 ranged from \$102 to \$350/acre, and the three sales nearest Parcel 30 ranged from \$511 to \$1,115/acre. A dry hole was drilled in the NW 1/4 of Parcel 30, but a producing well was drilled in the section immediately south. These facts indicate that the high bids received for Parcels 29 and 30 are significantly lower than the recommended MAB's [minimum acceptable bid values].

The cover memorandum, which was the MMS' recommendation to BLM regarding adequacy of bids received in the April 27, 1982, competitive oil and gas lease sale contained the following paragraph: "However, the MMS recommends that the high bids received for parcels 2, 29 and 30 be rejected because they were significantly below the determined minimum acceptable bid (MAB) values (see attached)."

After receipt of notice that its bid had been rejected, TXO obtained a copy of the MMS memorandum dated May 7, 1983. At TXO's request, a meeting was held with MMS. TXO states that at this meeting it took issue with the basis for MMS' determination, questioned the reasoning behind the use of certain previous sales when making the comparison and presented facts which, if unanswered, would cause the analysis performed by MMS to be questioned. TXO asserts that at a subsequent meeting held on June 16, 1982, it presented additional data to support its contention. TXO also states that three telephone conversations took place following the second meeting in which questions posed by MMS were addressed by TXO personnel.

Subsequent to these meetings and telephone conversations MMS wrote a memorandum to the Utah State Director which stated that "[a]fter reviewing

this additional information MMS concludes that the bid is insufficient and should be rejected." 1/
Following receipt of notice that BLM continued to reject TXO's bid, TXO appealed to this Board. 2/

[1, 2] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); Frances J. Richmond, 29 IBLA 137 (1977).

At the time of the sale MMS was 3/ the Secretary's technical expert in matters concerning geologic evaluation of tracts of the land offered at a

1/ The MMS memorandum recommending rejection of the bid after reconsideration was three sentences long. The first sentence identified the tract and sale. The second sentence acknowledged receipt of data from TXO in support of its bid. The third sentence is quoted above.

2/ We note that on June 23, 1982, BLM granted TXO an "Extension of Period to Appeal" until July 21, 1982. This extension was granted in response to a June 21, 1983, request by counsel for TXO that such an extension be granted because "MMS has agreed to review this matter." Counsel added, however, that if for any reason the extension could not be granted, BLM was to consider his letter as a notice of appeal. The extension was clearly improper. Such extensions were the subject of BLM Instruction Memorandum No. 83-537, dated May 10, 1983, which states:

"It was recently brought to our attention by the Director of the Office of Hearings and Appeals that some BLM personnel are apparently unaware that there is no authority to waive or extend the 30-day period for filing notices of appeal from Bureau decisions. Certain BLM personnel, however, have formally been granting such extensions. Section 4.411(b) of 43 CFR clearly states: '[n]o extension of time will be granted for filing the notice of appeal.'

* * * * *

"Since the authorized waiver or extension of the filing period for notices of appeal could gravely embarrass the Department and/or compromise the rights of third parties, under no circumstances is an extension or waiver of the filing period to be granted."

(Emphasis in original.) In a situation such as that presented in this case where MMS has agreed to review the matter, BLM could have indicated that it was treating TXO's request for an extension as a request for reconsideration, and that following MMS' review, BLM would issue a new decision granting TXO 30 days from receipt of the decision on reconsideration within which to appeal.

3/ Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was amended on Feb. 7, 1983, the amendment is not relevant to this discussion.

sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979). The Board stated in Southern Union Exploration Co., 51 IBLA 89, 92 (1980):

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

We are unable to determine the correctness of the BLM decision on appellant's bid or the merits of appellant's arguments on the present record. The record forwarded to this Board contains the memorandum attached to the initial MMS recommendation that the bid be rejected. The record did not contain any underlying calculations nor did it contain one shred of data in support of its subsequent conclusion. Further, BLM chose not to file an answer to TXO's statement of reasons. ^{4/} In order for this Board to find that BLM had a rational basis for its conclusion, this Board must know the basis. When BLM relies upon MMS, as it did in this case, it must ensure that the MMS determination was reasoned and sound. The concern of the Board with respect to this requirement was recently reinforced when this Board found that, in its determination of sufficiency of a bid, the MMS had based its conclusion upon production from a nearby well. The figures MMS used for average daily production were in fact average monthly production figures. See Stephen M. Bess, 71 IBLA 122 (1983). The Board will not substitute its judgment for that of BLM in determining fair market value for parcel 30 but it will require sufficient elaboration and analysis of controlling data to ensure that there was a rational basis for the determination. Petrovest, Inc., 71 IBLA 250 (1983); Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

The case is therefore remanded to BLM. A postsale evaluation will be made, and appellant's bid will be readjudicated on the basis of the figure

^{4/} We recognize that it is not mandatory for BLM to file an answer. (See 43 CFR 4.414). However, the opportunity to file an answer afforded BLM an additional chance to come forward and demonstrate the rationale for the MMS determination.

thus derived. Should the bid again be rejected, the record submitted to this Board on appeal shall be complete, with no omissions, exclusions or deletions of any documents or data, and will specifically include all data in support of the determination including the actual amounts of pre and postsale evaluations. Should such record contain any information which is prohibited by law from public disclosure, it should be so identified. However, no record of this Department may be treated as immune from Secretarial review on appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for action consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

